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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,039	02/20/2002	Jack J. Richards	4244P2431	9546
23504	7590	01/30/2006	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,039

Applicant(s)

RICHARDS, JACK J.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,8,9,23,25,29 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8,9,23,25,29 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed November 1, 2005, has been entered. Claims 1, 23, 29, and 32 have been amended as requested. Claims 2, 7, 10-22, 24, 26-28, 30, 31, and 33 have been cancelled. Thus, the pending claims are 1, 3-6, 8, 9, 23, 25, 29, and 32.

2. Said amendment, along with applicant's arguments thereto, are sufficient to overcome the prior art rejections based upon the cited Skolnick reference (US 4,230,763), as set forth in sections 9 and 11-13. Specifically, applicant has amended independent claims 1, 23, and 29 to recite that the metallized film is substantially light impermeable and has an optical rating of between approximately 1.5 and 4. As noted by applicant, the Skolnick invention is directed to a drape that permits visible light transmission and has a metallized layer on the order of Angstroms (Amendment, page 13, 1st paragraph and page 15, 1st paragraph). Applicant's metal layer is on the order of millimeters so that the drape is substantially light impermeable. One could not modify the Skolnick invention with a metal film thick enough to be light impermeable without destroying the intent of said invention. Therefore, the present claims are patentably distinct from the Skolnick invention.

3. With respect to the Poettgen rejection, applicant's amendments are also sufficient to overcome the prior art. Specifically, Poettgen employs a metal layer on the order of 300 Angstroms. Additionally, Poettgen does not suggest increasing the metal layer in order to provide a substantially light impermeable cover having the desired optical rating to prevent light transmission. Since Poettgen is directed to a surgical drape, one skilled in the art would not have

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proper motivation to modify the thickness to provide a method for preventing transmission of visible light through a drapery as presently claimed. Therefore, the Poettgen rejection set forth in section 4 of the last Office Action is also hereby withdrawn.

4. With respect to applicant's arguments, two comments are made. First, applicant asserts that the present claims, wherein the acrylic is coated directly to the metallized film, exclude Skolnick's adhesive layers (Amendment, page 10, 1st paragraph and page 14, 1st paragraph). In response, it is asserted that the adhesive layers of Skolnick are equivalent to applicant's acrylic layers in that said adhesive may be an acrylic polymer. Secondly, applicant notes that amended claim 29 includes a positive recitation to acrylic layers (Amendment, page 14, 1st paragraph). However, claim 29 has not been so amended.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. Claims 1, 3-6, 8, 9, 23, 25, 29, and 32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No. 10/761,834. Although the conflicting claims are not identical, they are not patentably distinct from each other because the blackout film impregnated with aluminum of the copending application encompasses the presently claimed metallized film.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102/103

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 29 and 32 are rejected under 35 USC 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as being unpatentable over JP 09-252931 assigned to Hagiwara.

Hagiwara discloses a curtain for shielding light and heat comprising a metallic film sandwiched between two layers of fabric (abstract). Said fabric is bonded to the metallic film by

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two adhesive layers (abstract). The metallic film is made by vacuum deposition of the metal, preferably aluminum, onto a synthetic resin film, such as polypropylene (sections [0011] and [0014]). The metal may be applied to both sides of the film (section [0013]). The thickness of the metallic film is preferably within 1-15 microns (0.001-0.015 mm) so as to provide a light transmission factor of less than 5% (section [0014]).

Thus, Hagiwara teaches the invention of claims 29 and 32 with the exception of the claimed optical rating. However, it is reasonable to presume that said optical rating is inherent to the Hagiwara invention. Support for said presumption is found in the use of similar materials (i.e., metallized aluminum film of the claimed thickness) and in the use of similar production process (i.e., deposition of said aluminum metal on a polymeric film) used to produce the metallized film. The burden is upon applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, the claimed optical rating would obviously have been provided by the process disclosed by Skolnick. Note *In re Best*, 195 USPQ 433 as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 29 and 32 are rejected.

Claim Rejections - 35 USC § 103

10. Claims 1, 4-6, 8, 9, and 23 are rejected under 35 USC 103(a) as being unpatentable over the cited Hagiwara reference in view of US 4,230,763 issued to Skolnick.

As discussed above, Hagiwara teaches the claimed invention with the exception of (a) the recited optical rating and (b) that the adhesive layers are acrylic latex layers.

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With respect to the former exception, the arguments presented above are also applicable here. Regarding the latter exception, it would have been obvious to one of ordinary skill in the art to employ an acrylic polymer for the adhesive layer of Hagiwara. Hagiwara teaches said adhesive layer may be polyethylene, ethylene-vinylacetate copolymer, atactic polypropylene, polyisobutylene, polyamide, polyester, etc. (section [0015]). Acrylic polymers are readily known in the art as possessing adhesive properties and said acrylics are known to be suitable for similar applications. Note Skolnick's teaching of an adhesive for coupling drapery fabrics and a metallized film may be an acrylic polymer (col. 3, lines 26-35). Thus, it would have been readily obvious to one skilled in the art to substitute an acrylic adhesive, as taught by Skolnick, for the adhesive disclosed by Hagiwara with the expectation of producing a flexible, durable, and strong fabric to film bond. Therefore, claims 1, 6, 8, 9, and 23 are rejected as being obvious over the cited prior art.

11. Regarding claims 4 and 5, while Hagiwara and Skolnick fail to explicitly teach the use of a flame retardant in the acrylic adhesive layer, it would have been readily obvious to one skilled in the art to employ such an additive. Specifically, flame retardant additives are common to drapery fabrics due to governmental requirements for resistance to fire. Applicant is hereby given Official Notice of this fact. [Note applicant has not traversed this Official Notice in the previous rejections.] Therefore, it would have been readily obvious to one skilled in the art to incorporate a flame retardant into the adhesive layer in order to provide the drapery with fire resistance. Thus, claims 4 and 5 are also rejected over the cited prior art.

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12. Claims 3 and 25 are rejected under 35 USC 103(a) as being unpatentable over the cited Hagiwara and Skolnick references in view of US 4,488,552 issued to McCann et al. and/or US 4,507,342 issued to Kielbania, Jr.

Hagiwara and Skolnick fail to teach a fabric layer comprised of a flocked fabric. however, it is known in the drapery art to employ flocked fabrics. For example, McCann teaches lined drapery fabrics may be flocked or unflocked (col. 3, lines 34-48), while Kielbania teaches flock-coated items useful as decorative draperies (col. 15, lines 38-40). Thus, it would have been readily obvious to one skilled in the art to employ a flocked fabric for the drapery fabric of Hagiwara in order to provide a soft, drapable fabric having good insulation properties. Therefore, claims 3 and 25 are also rejected.

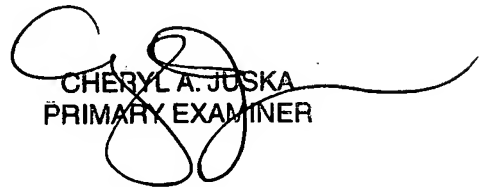
Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
January 23, 2006